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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-11-2026

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.33683 of 2026 and
Crl.M.P.Nos.22188 & 22189 of 2026

CNR: {HCMA012731482026}

Case QR

1. Shanmugavel Prabhakaran @ Shanmugavadivel

2. Sabarigiri

..Petitioner(s)

Vs

1. The State rep. by
   The Inspector of Police
   Anamalai Police Station,
   Coimbatore.

2. Manojkumar
   Village Officer,
   Kaliyappagoundpudur,
   Anamalai Taluk,
   Coimbatore.

..Respondent(s)

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, to call for the records in S.T.C.No.3477 of 2023 on the file of the Judicial Magistrate Court No.I, Pollachi, and to quash the same.

For Petitioner(s): Mr.J.Ganesh

For Respondent(s): Mr.R.Ganesh Kumar,
Additional Public Prosecutor for R1

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ORDER

This Criminal Original Petition has been filed to quash the proceeding in S.T.C.No.3477 of 2023 pending on the file of the Judicial Magistrate Court No.I, Pollachi.

2.The case of the prosecution is that on 02.03.2021, at about 12.00 noon, while the 2nd respondent, Village Administrative Officer, Kaliyappagoundanpudur, along with one Velusamy, was conducting surveillance near Kaliyappagoundanpudur Bus Stop, he noticed two political party flagpoles erected in a public place near the bus stop, allegedly in violation of the Model Code of Conduct, which came into force on 26.02.2021, in connection with 2021 Tamil Nadu Legislative Assembly Election. On enquiry, he identified the persons responsible for erecting the said flagpoles as the petitioners herein, Organising Secretary of Tamil Nadu Dravida Kazhagam, and Sabarigiri, Anaimalai Union Coordinator of Dravida Viduthalai Kazhagam. Thereafter, the 2nd respondent photographed the said flagpoles using his mobile phone and submitted four printed photographs along with a written complaint before the 1st respondent Police. Based on the said complaint, a case was registered in Crime No.107 of 2021 for the offences punishable under Section 188 of IPC and Section 4(1) of Tamil Nadu Open Places (Prevention of Disfigurement) Act. Upon completion of the investigation, the respondent

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police laid a charge sheet before the learned Judicial Magistrate No.I, Pollachi and the same was taken cognizance in S.T.C.No.3477 of 2023.

3.The learned counsel for the petitioners submitted that the petitioners are innocent persons and they have been falsely implicated in this case. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and also the right to freely express one's views are constitutionally protected fundamental rights under Part III of the Indian Constitution and their enjoyment can be restricted only in a reasonable manner and can be curtailed through a fair and non-arbitrary procedure as provided under Article 19 of the Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assembly that is so essential to a democracy. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, except on a complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate. Further, he submitted that there is no material to show that the petitioners had erected the alleged flagpoles or that the same were erected without obtaining the written consent of the owner or occupier or the person in management of the property. Therefore, he sought for quashing the proceedings.

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4.Per contra, the learned Government Advocate (Crl.Side) submitted that the petitioners had erected two political party flagpoles in a public place near the Kaliyappagoundanpudur Bus Stop, in violation of the Model Code of Conduct, which came into force on 26.02.2021, in connection with the 2021 Tamil Nadu Legislative Assembly Election. Further, he would submit that Section 188 of IPC is a cognizable offence and therefore, it is the duty of the police to register a case. Though there is a bar under Section 195(1)(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register an FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the respondents and perused the materials available on record.

6.On perusal of the charge, it is seen that the petitioners had allegedly erected two political party flagpoles in a public place near Kaliyappagoundanpudur Bus Stop, in violation of the Model Code of Conduct. Therefore, the respondent police levelled the charges under Section 188 of IPC and Section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, as against the petitioners. Section 188 of IPC reads as follows:

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> "*188. Disobedience to order duly promulgated by public servant.— Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*"

7.The only question for consideration is whether the registration of the case under Section 188 of IPC and Section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, by the respondent police is permissible under law or not? In this regard, it is relevant to extract Section 195(1)(a) of the Criminal Procedure Code, 1973:

> "*195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.*
>
> *(1) No Court shall take cognizance—*

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(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;..."

Therefore, it is very clear that for taking cognizance of the offence punishable under Section 188 of IPC, the public servant concerned should lodge a complaint in writing before the jurisdictional Magistrate and other than that, no Court has power to take cognizance.

8.The learned counsel for the petitioners relied upon a judgment in ***Mahaboob Basha Vs. Sambanda Reddiar and others***, reported in ***1994 (1) Crimes, Page 477***. He also relied upon a judgment in a batch of quash petitions, reported in ***2018-2-L.W. (Crl.) 606*** in ***Crl.O.P. (MD) No.1356 of 2018***, dated **20.09.2018**, in the case of ***Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District***, and this Court held in Paragraph 25, as follows:

"*25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is*

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concerned:

(a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

(b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

(c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

(d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

(i) that there must be an order promulgated by the public servant;

(ii) that such public servant is lawfully empowered to promulgate it;

(iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and

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under his management, has disobeyed;

and

(iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

(e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

(f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

(g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

(h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately

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formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C."

9.Insofar as the offence under Section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, is concerned, it is relevant to extract the said provision:

"*4. Penalty for unauthorised disfigurement by advertisements.—*

(1) Subject to the provisions of section 4A, whoever affixes to, or inscribes or exhibits on, any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both."

A reading of the above provision would clearly show that to attract the offence under Section 4(1) of the said Act, there must be an advertisement affixed to, inscribed or exhibited on a place open to public view, without obtaining the written consent of the owner or occupier or the person in management of the property in which such place is situated. In the case on hand, the prosecution alleges that the petitioners were responsible for erecting two political party

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flagpoles in a public place. However, the mere allegation that the flagpoles were erected in a public place, in violation of the Model Code of Conduct, by itself, would not be sufficient to attract the offence under Section 4(1) of the said Act. The prosecution has to establish that the alleged display would fall within the definition of advertisement under the said Act and that the same was exhibited without obtaining the written consent of the owner or occupier or the person in management of the property. Further, there must be specific material to show the involvement of the petitioners in the alleged act.

10.In the case on hand, the First Information Report has been registered by the 1st respondent police for the offence punishable under Section 188 of IPC, based on the written complaint given by the 2nd respondent before the 1st respondent police. However, the 1st respondent police is not competent to register an FIR for the offence punishable under Section 188 of IPC, in view of the guidelines issued by this Court in ***Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District***. As such, the proceedings insofar as the offence under Section 188 of IPC is concerned, are liable to be quashed. Further, insofar as the offence under Section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, is concerned, the prosecution must establish the necessary ingredients of the said provision. The mere erection of political party flagpoles in a public place, without any specific material to

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establish the commission of the offence and the involvement of the petitioners, would not be sufficient to sustain the prosecution. Therefore, the proceedings against the petitioners cannot be sustained and are liable to be quashed.

11.Accordingly, the proceedings in S.T.C.No.3477 of 2023 pending on the file of the learned Judicial Magistrate No.I, Pollachi, are hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1.The Judicial Magistrate No.I,
Pollachi.

2.The Inspector of Police
Anamalai Police Station,
Coimbatore.

3.The Public Prosecutor,
Madras High Court.

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G.K.ILANTHIRAIYAN, J.

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